IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 103 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

ADF FOODS LIMITED - Petitioner(s)
Versus
. - Respondent(s)

==========

Appearance :
MR DARSHAN M PARIKH for Petitioner(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 29/08/2007

ORAL JUDGMENT

1. The present petition is for sanctioning the scheme of amalgamation of Lusture Investment

Pvt. Ltd., which is a transferor company with ADF Goods Limited., transferee company, the petitioner herein. It has been stated that the registered office of the transferor company is at Mumbai and, therefore, under the jurisdiction of the High Court Judicature at Bombay , separate proceedings are taken out before the High Court of Bombay. The scheme of amalgamation is produced at Annexure “E”.

2. Pursuant to the order dated 30.3.2007 passed by this Court (Coram :M.R.Shah, J.)in Company Application No.147 of 2007, the meeting of the equity shareholders was ordered to be held on 30.4.2007 after issuing public advertisement and the Chairman was ordered to file the report. Pursuant thereto, Mr.Khashyap R. Mehta, Chairman appointed for such purpose has filed the affidavit on 03.03.2007 with the copy of the proceedings of the meeting showing that the Scheme is approved by the shareholders of more than 3/4th in value present at the meeting. Under these circumstances the statutory requirement of approval of the scheme by the requisite majority of the equity shareholders is complied with.

3. The present petition came to be admitted on 11.06.2007 and it was ordered to advertise in two local newspapers, both English & Gujarati daily, Ahmedabad edition and the publication in the Government gazette was dispensed with.

Notice was also issued to the Central Government through the Regional Director.

4. The affidavit is filed by Anita Gokhale, Company Secretary with the petitioning Company together with the copy of the paper publication pursuant to the order passed by this Court. As per the affidavit filed by Bimal R. Thakkar, Director of the petitioner Company, no objection is received by the petitioner or their learned advocate in response to the advertisement opposing the Scheme of Amalgamation or otherwise.

5. In the case of Lusture Investment Pvt. Ltd., which is a Transferor Company, as per the affidavit dated 04.08.2007 filed by Ramesh H. Thakkar, Managing Director of the petitioner Company, Company Petition No.262 of 2007 was filed before the High Court of Bombay and vide order dated 12.06.2007 passed by the High Court of Bombay, the Scheme is sanctioned. A copy of the said order dated 12.06.2007 passed by the High Court of Bombay is produced together with the said affidavit.

6. In response to the notice to the Central Government, affidavit dated 20.07.2007 is filed by Mr. V.K. Khubchandani, Registrar of Companies raising the objection based on the communication received by him vide letter dated 18.07.2007 from the Regional Director, Company Affairs.

7. In response to the said objection, further

affidavit is filed by Ramesh H. Thakkar, Managing Director of the petitioner Company, where by the latest unaudited financial report of the petitioning Company as on 30.06.2007 are produced and therefore, objection No.2 in the letter dated 18.07.2007 of the Regional Director, Ministry of Corporate Affairs, Central Government would not survive.

8. The other objection raised is for non-utilisation or clubbing of the authorised capital of the Transferor Company into the Transferee Company. It does not appear to be on a correct factual premise inasmuch as as per the Scheme, and the said aspect is confirmed by Mr.Parikh, the learned counsel for the petitioner that in the Scheme there is no contemplation or for utilisation or clubbing of the authorised capital of the Transferor Company into Transferee Company. Hence, the said objection would also not survive.

9. No other adverse circumstance is brought to the notice of this Court.

10. Hence, the present Scheme of Amalgamation is sanctioned as per the provisions of the Companies Act.

11. The petition is allowed to the aforesaid extent.

12.The cost of the Asst. Solicitor General is quantified at Rs.3,500/-. It will be open to the petitioning Company to pay the cost to the learned counsel either directly or by A/c. Payee cheque.

(JAYANT PATEL, J.)

*bjoy